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BEFORE THE FEDERAL ELECTION COMMISSION

2013 JUL 19 PM 2: 23

In the Matter of

Edolphus Towns

Gwendolyn Towns

Committee to Re-elect Ed Towns and
Albert C. Wiltshire in his official capacity as treasurer

CELA 585

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

(1) Enter into pre-probable cause conciliation with Edolphus Towns, Gwendolyn Towns, and the Committee to Re-elect Ed Towns and Albert C. Wiltshire in his official capacity as treasurer ("Towns Committee"); (2) ; and (3) approve the appropriate letter.

II. INTRODUCTION

On November 20, 2012, the Commission found reason to believe that then- Representative Edolphus Towns, his wife, Gwendolyn Towns, and the Towns Committee violated 2 U.S.C. § 439a by failing to reimburse the Towns Committee for the personal use of a vehicle that was also used for campaign-related purposes. We conducted an investigation to determine the total amount of time and expenses related to the personal use of the vehicle. In response, Respondents failed to produce any evidence regarding the personal use of the vehicle, or Edolphus and Gwendolyn Towns's alleged payments for that personal use. Instead, Respondents raised various meritless legal arguments in response to the Commission's reason-to-believe finding.

1 We recommend that the Commission enter into pre-probable cause conciliation with
2 Respondents jointly, as they have requested.

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6 **III. BACKGROUND**

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8 The Complaint alleges that Edolphus Towns, through the Towns Committee,
9 converted campaign funds to personal use based on news reports that, *inter alia*, his wife used
10 a campaign-financed vehicle for non-campaign activities such as running errands and driving
11 to and from her place of employment. Compl. ¶ 2 (May 30, 2012). In response to the
12 Complaint, Respondents stated that in 2010, Edolphus and Gwendolyn Towns leased a
13 vehicle that they used for campaign, officeholder, and personal purposes. Committee Resp. at
14 1, 3 (June 26, 2012); Gwendolyn Towns Resp. at 1-2 (Aug. 30, 2012). According to
15 Respondents, "the vehicle is primarily located and used in Brooklyn by Mrs. Towns, the
16 Congressman, and campaign staffers." Committee Resp. at 2; *see also* Gwendolyn Towns
17 Resp. at 1 (same).

18 Respondents admitted that Edolphus and Gwendolyn Towns used the vehicle in part
19 for personal activities, though they claimed that their "personal uses of the vehicle [were] only
20 a fraction of the overall use of the vehicle." Committee Resp. at 3; Gwendolyn Towns Resp.
21 at 3. They also admit that the Towns Committee paid the entire cost of the vehicle's lease.
22 Committee Resp. at 1; Gwendolyn Towns Resp. at 1. Up to the date of the Complaint, May
23 30, 2012, the Towns Committee had paid \$14,316.34 in lease payments, at a rate of \$602.33
24 per month. Committee Resp. at 1, 3 n.3; Gwendolyn Towns Resp. at 1, 3 n.3. Disclosure

1 reports reveal that the Towns Committee thereafter paid an additional \$3,614.58 on the lease,
2 for a total of \$17,930.92.¹

3 Respondents nevertheless maintained that Edolphus and Gwendolyn Towns paid for
4 their personal use of the vehicle by paying for all of the vehicle's insurance and fuel costs.
5 Committee Resp. at 1, 3; Gwendolyn Towns Resp. at 1, 3. Specifically, they claim to have
6 paid \$175 per month for the vehicle's insurance and approximately \$75 to \$125 per month for
7 fuel, for a total of approximately \$250 to \$300 per month. Committee Resp. at 1; Gwendolyn
8 Towns Resp. at 1. These alleged payments amount to approximately one-third of the total
9 cost of the vehicle given the Towns Committee's \$602.43 monthly lease payments. See
10 Committee Resp. at 3; Gwendolyn Towns Resp. at 3.

11 But Respondents provided no documents at the reason-to-believe stage to substantiate
12 how often Edolphus and Gwendolyn Towns used the vehicle for personal activities, or that
13 Edolphus or Gwendolyn Towns paid for the vehicle's insurance and fuel expenses. In fact,
14 the Towns Committee's disclosure reports cast doubt on Edolphus and Gwendolyn Towns's
15 claim to have paid for all of the vehicle's fuel costs. Those reports show that the Towns
16 Committee made at least \$717.09 in disbursements (including reimbursements to Edolphus
17 Towns) for "gas" and "tolls" between August 2010 and May 2011. Factual & Legal Analysis
18 at 6-7 ("F&LA").²

¹ See 2012 Amended July Quarterly Rpt. at 7 (Sept. 28, 2012), <http://images.nictusa.com/pdf/763/12954241763/12954241763.pdf>; 2012 Oct. Quarterly Rpt. at 9-10 (Oct. 15, 2012), <http://images.nictusa.com/pdf/675/12954437675/12954437675.pdf>; 2012 Year-End Rpt. at 9 (Jan. 30, 2013), <http://images.nictusa.com/pdf/262/13960542262/13960542262.pdf>.

² 2010 Oct. Quarterly Rpt. at 32, 46-47 (Oct. 15, 2010), <http://images.nictusa.com/pdf/510/10991413510/10991413510.pdf>; 2010 Pre-General Report at 21 (Oct. 26, 2010), <http://images.nictusa.com/pdf/641/10931763641/10931763641.pdf>; 2011 Amended July Quarterly Rpt. at 79 (Oct. 14, 2011), <http://images.nictusa.com/pdf/014/11971613014/11971613014.pdf>.

1 In any event, as the Commission pointed out in its factual and legal analysis, even if
2 Edolphus and Gwendolyn Towns did pay for the vehicle's insurance and fuel costs with
3 personal funds, "this method of apportioning costs could not comply with the requirements of
4 the law, which requires reimbursement of 'the campaign account within 30 days'" to ensure
5 that payments for personal use of a vehicle are disclosed on the public record. *Id.* at 6
6 (quoting 11 C.F.R. § 113.1(g)(1)(ii)(D)).

7 As a result, the Commission found reason to believe that Respondents violated
8 2 U.S.C. § 439a, and authorized the Office of General Counsel to conduct an investigation to
9 ascertain the total amount of time and expenses related to the personal use of the vehicle. *See*
10 First Gen. Counsel's Rpt. at 7; Certification (Nov. 20, 2012).

11 **III. RESULTS OF THE INVESTIGATION**

12 To determine the amount of funds Edolphus and Gwendolyn Towns should have
13 reimbursed to the Towns Committee, we asked Respondents to provide records reflecting the
14 dates of, and expenses for their personal use of the vehicle.³ Respondents failed to do so.
15 They claim that Edolphus Towns's records were moved into storage prior to his retirement
16 from Congress in December 2012, and therefore that it would be "incredibly onerous,
17 expensive and time consuming . . . to locate the credit card statements, receipts, and other
18 documents that would conclusively substantiate the use of the vehicle." E-mail from
19 Katherine A. Belinski, Esq., Att'y, Nossaman LLP, to Tracey L. Ligon, Att'y, FEC (Mar. 5,
20 2013, 05:48 EST).

21 Citing their previous Responses, Respondents assert that their descriptions of the
22 vehicle's use are sufficient to show that their personal use of the vehicle was minimal

³ Pursuant to 11 C.F.R. § 113.1(g)(8), Respondents were required to keep a contemporaneous log or other record to document dates and expenses related to their personal use of campaign funds.

1 compared to the overall vehicle use which, they state, was itself minimal. *Id.* Respondents
2 supplemented their earlier Responses by claiming that Gwendolyn Towns worked only three
3 days per week and generally would use the vehicle for personal reasons on some of those days
4 to get to and from work and run a few errands. *Id.* Her other uses of the vehicle were
5 allegedly for official business. *Id.* Edolphus Towns allegedly used the vehicle for
6 officeholder duties when he was in Brooklyn and to travel between his home district and
7 Washington, D.C. *Id.* According to Respondents, "the overwhelming majority of the time the
8 vehicle wasn't used at all, for any purpose," "as evidenced by the very low mileage on the
9 vehicle," *id.*, which, Respondents state was 5,224 miles as of May 30, 2012, Committee Resp.
10 at 2; Gwendolyn Towns Resp. at 2. Respondents provided no evidence, however, for these
11 assertions.

12 Respondents also dispute the Commission's conclusion, in its factual and legal
13 analysis, that there is reason to believe that Respondents violated the Act. They again argue
14 that Edolphus and Gwendolyn Towns's alleged payments for the vehicle's insurance and fuel
15 costs were a permissible way to pay for their personal use of the vehicle, even though these
16 payments were not reimbursements to the Towns Committee. *See* Letter from Katherine A.
17 Belinski, Att'y, Nossaman LLP, to Anthony Herman, Gen. Counsel, FEC at 1 (Doc. 17, 2012)
18 ("RTB Resp."). Respondents claim that although the Commission's regulations require
19 reimbursement "[i]f a committee uses campaign funds to pay expenses associated with a
20 vehicle," neither the Act nor the regulations affirmatively require a committee to use
21 campaign funds to pay 100% of the expenses involved with a mixed-use vehicle. *Id.* (quoting
22 11 C.F.R. § 113.1(g)(1)(ii)(D)).

1 Second, Respondents disagree with the Commission's conclusion that their method of
2 apportioning the vehicle's cost "avoids disclosure of the reimbursements in disclosure reports
3 of the Committee, and thus impermissibly removes that activity from the public record." *Id.*
4 (quoting F&LA at 6). Respondents point out that 11 C.F.R. § 106.3, which governs the
5 allocation of expenses between campaign and non-campaign related travel, requires that
6 committees report expenses related only to campaign travel, and not personal travel. RTB
7 Resp. at 1-2. Therefore, Respondents claim, their allocation of payments did not evade any
8 reporting requirement and is prescribed by the Commission's regulations.⁴ *Id.*

9 IV. ANALYSIS

10 Under the Federal Election Campaign Act of 1971, as amended (the "Act") and
11 Commission regulations, a candidate and the candidate's committee have wide discretion in
12 making expenditures to influence the candidate's election, but may not convert a contribution
13 or donation described in 2 U.S.C. § 439a(a) to the personal use of the candidate or any other
14 person. 2 U.S.C. § 439a(b)(1); 11 C.F.R. § 113.1(g). A contribution or donation has been
15 converted to personal use if it "is used to fulfill any commitment, obligation, or expense of a
16 person that would exist irrespective of the candidate's election campaign or individual's
17 duties as a holder of Federal office," 2 U.S.C. § 439a(b)(2), such as a "noncampaign-related
18 automobile expense," *id.* § 439a(b)(2)(C). Where a

19 committee uses campaign funds to pay expenses associated with a
20 vehicle that is used for both personal activities beyond a *de minimis*
21 amount and campaign or officeholder-related activities, the portion of
22 the vehicle expenses associated with the personal activities is personal
23 use, unless the person(s) using the vehicle for personal activities

⁴ Respondents also argue that the Towns Committee's \$717.09 in disbursements for gas and tolls (including reimbursements to Edolphus Towns) were for the Congressman's use of a vehicle other than the one at issue here, and thus were "legitimate expenses for campaign travel . . . and are not a personal use of campaign funds." RTB Resp. at 2. Respondents have provided no evidence, however, to substantiate this assertion.

1 reimburse(s) the campaign account within thirty days for the expenses
2 associated with the personal activities.
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4 11 C.F.R. § 113.1(g)(1)(ii)(D). When campaign funds are disbursed for both personal and
5 campaign or officeholder use, "a contemporaneous log or other record must be kept to
6 document the dates and expenses related to the personal use," and this log or record must be
7 updated with each personal use. *Id.* § 113.1(g)(8).

8 Here, Respondents admit that the Towns Committee used campaign funds to pay for
9 the vehicle's lease expenses. Respondents also admit that Edolphus and Gwendolyn Towns
10 used the vehicle, in part, for personal activities. Respondents claim that these personal
11 activities were "only a fraction of the overall use of the vehicle," Committee Resp. at 3, but
12 do not claim that they were a "*de minimis* amount" of personal activities such that section
13 113.1(g)(1)(ii)(D) would not apply.⁵ Respondents concede that the Towns Committee was
14 not reimbursed for Edolphus and Gwendolyn Towns's use of the vehicle for personal
15 activities. As a result, the Towns Committee's vehicle expenses that were associated with
16 Edolphus and Gwendolyn Towns's personal activities were "personal use" under 11 C.F.R.
17 § 113.1(g)(1)(ii)(D).

18 As the Commission previously determined, at the Reason to Believe stage, Edolphus
19 and Gwendolyn Towns's alleged payment of the vehicle's insurance and fuel expenses does
20 not satisfy section 113.1(g)(1)(ii)(D)'s requirement that the Towns's Committee be
21 reimbursed. F&LA at 6. This conclusion does not create a requirement that committees use
22 campaign funds to pay 100% of all expenses involved with a mixed-used vehicle and then
23 receive reimbursement, as Respondents claim. It simply requires that a committee receive

⁵ Nor could Respondents make such a claim, in light of their assertion that Edolphus and Gwendolyn Towns used personal funds to pay for approximately one-third of the vehicle's overall cost "based upon the use of the vehicle." RTB Resp. at 2.

1 reimbursement for the vehicle expenses *that it did in fact pay* relating to personal use. As
2 Respondents point out, 11 C.F.R. § 113.1(g)(1)(ii)(D) applies “[i]f a committee uses
3 campaign funds to pay expenses associated with a [mixed-use] vehicle,” RTB Resp. at 1 (first
4 alteration in original). Here, Respondents readily concede that the Towns Committee used
5 campaign funds to pay for the vehicle’s lease. Some portion of those lease payments are
6 attributable to Edolphus and Gwendolyn Towns’s admitted personal use of the vehicle.
7 Section 113.1(g)(1)(ii)(D) requires that the Towns Committee be reimbursed for that portion.
8 The insurance and fuel payments Edolphus and Gwendolyn Towns claim to have made were
9 for separate expenses and were not made to the Towns Committee. Thus, allowing these
10 payments to substitute for reimbursement to the Towns Committee would, in fact,
11 “impermissibly remove[] that activity from the public record,” as the Commission has
12 concluded. F&LA at 6.⁶

13 Respondents have failed to produce a “contemporaneous log or other record”
14 documenting the dates and expenses related to their personal use of campaign funds for the
15 vehicle. 11 C.F.R. § 113.1(g)(8).⁷ In the absence of such log or record, the total \$17,930.92
16 amount that the Towns Committee paid in connection with the vehicle is deemed personal use
17 of campaign funds. *See* Final Audit Report on the Meeka for Congress Committee, Jan. 1,
18 2003 -- Dec. 31, 2004, at 15-18, AR 06-03 (Meeks for Congress) (“FAR”); First Gen.
19 Counsel’s Rpt. at 5, MUR 5895 (Meeks for Congress) (“First GCR”); Certification ¶ 7 (Jan.

⁶ Respondents argue that because 11 C.F.R. § 106.3 requires that committees report only campaign-related travel expenditures, reimbursements were not necessary here. But Respondents fail to recognize that because Edolphus and Gwendolyn Towns did not reimburse the Towns Committee for the personal use aspect of the vehicle’s lease payments, the Towns Committee has *overreported* its campaign-related travel expenditures relating to the vehicle. Reimbursements, therefore, were required here to ensure accurate reporting under section 106.3.

⁷ *See also* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,974 (Dec. 13, 2002) (record-keeping requirement designed to help determine to what extent “case-by-case” expenses are personal in nature).

1 10, 2007), MUR 5895 (Meeks for Congress). In Meeks for Congress, the treasurer claimed
2 that the committee and the candidate shared lease payments for two mixed-use vehicles
3 equally, and that this even split reflected the actual usage of the vehicles. *See* FAR at 18, AR
4 06-03. The treasurer provided no records, however, demonstrating the actual usage of the
5 vehicle, *id.*, just as Respondents have failed to do here. As a result, the Commission found
6 reason to believe that the *total amount* that the committee paid for the vehicles (\$9,812) was
7 "personal use." *See* FAR at 15-18, AR 06-03; First GCR at 5, MUR 5895; Certification ¶ 7
8 (Jan. 10, 2007), MUR 5895.

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12 Based on the above, we recommend that the Commission enter into pre-probable
13 cause conciliation with Respondents to resolve their violations of 2 U.S.C. § 439a.
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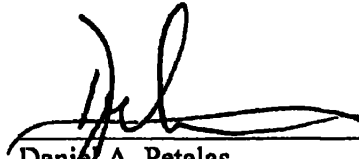
VI. RECOMMENDATIONS

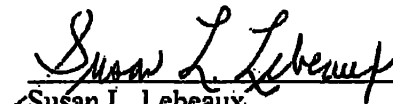
1. Enter into conciliation prior to findings of probable cause to believe with Edolphus Towns, Gwendolyn Towns, and the Committee to Re-elect Ed Towns and Albert C. Wiltshire in his official capacity as treasurer.

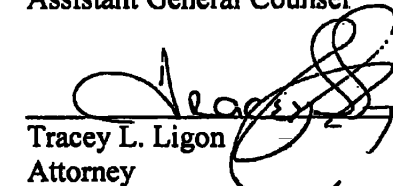
2. ..

3. Approve the appropriate letter.

Date 7/18/13


Daniel A. Petalas
Associate General Counsel for
Enforcement


Susan L. Lebeaux
Assistant General Counsel


Tracey L. Ligon
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